

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



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June 19, 2006

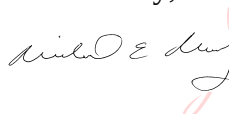
Ms. Mary Jo Kunkle
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
Lansing, MI 48911

Dear Ms. Kunkle:

Re: MPSC Case No. U-14701

Enclosed for filing in the above-captioned case please find the **Attorney General's Replies to Exceptions**, together with a Proof of Service. This filing is being submitted electronically pursuant to the Commission's Paperless Electronic Filings Program.

Sincerely,

 Michael E. Moody
2006.06.19
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MEM/wjw
Enclosures
c: All Parties

PROOF OF SERVICE - U-14701

The undersigned certifies that a copy of the **Attorney General's Replies to Exceptions** was served upon the parties listed below by mailing the same to them at their respective addresses with first class postage fully prepaid thereon, on the 19th day of June, 2006.

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2006.06.19 15:44:05 -04'00'
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STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of
Consumers Energy Company for approval
of a power supply cost recovery plan and
authorization of power supply cost recovery
factors for calendar year 2006.

Case No. U-14701

ATTORNEY GENERAL'S REPLIES TO EXCEPTIONS

I. INTRODUCTION

On May 25, 2006, Michigan Public Service Commission (MPSC or Commission) Administrative Law Judge Mark E. Cummins (ALJ) issued his Proposal for Decision (PFD) in the above captioned case. Pursuant to the schedule provided in the PFD, the Attorney General respectfully submits the following Replies to Exceptions to the PFD.

II. REPLY TO CONSUMERS' EXCEPTIONS

Consumers Energy Company (Consumers) claims that its case regarding intra-period underrecoveries is distinguishable from the prior Commission orders rejecting intra-period underrecoveries in plan cases.

To begin with, the MPSC's December 22, 2005 order appears to have resolved the question of intra-period underrecoveries when it stated: "[f]inally, unintended consequences, if any, arising from the implementation of the approved factors may be addressed in the reconciliation proceeding." (MPSC's December 22, 2005, Opinion and Order, U-14701, p 8). Thus, the MPSC recognized that any underrecovery would be addressed in U-14701-R and not in U-14701 as Consumers Energy suggests in its replies to exceptions.

In any event, the MPSC has previously rejected the recovery of intraperiod underrecoveries in a PSCR plan case. In the MPSC's July 3, 1984 Order in Case No. U-7785, the MPSC explained:

The Commission agrees with the Staff that this controversy centers on one issue -- whether, in a PSCR case under Act 304, a utility may, during a plan year for which the factors are proposed, increase its filed factors in order to generate revenues in the remaining portion of the plan year sufficient to offset an estimated amount of underrecovery of allowable power supply costs actually experienced in the elapsed portion of the year. Based on a review of the case and mindful of legislative intent, the Commission finds a utility may not adjust its filed factors for such purposes.

* * *

Act 304 thus anticipates a forward going plan. It does not, in any way, support the filing of a plan under which a utility can charge its customers a factor to recover alleged underrecovered costs from a prior period.

* * *

To allow Consumers to, in effect, conduct its own reconciliation would be the equivalent of authorizing retroactive ratemaking outside the very limited exception expressed in Act 304.

(MPSC's July 3, 1984 Order in Case No. U-7785, pp 8, 10).

The above order in Case No. U-7785 dealt with Consumers Power Company's requests for a second quarter supplemental factor to recover underrecoveries in the first quarter of the plan year. (MPSC's July 3, 1984 Order in Case No. U-7785, pp 1-2). In fact, the MPSC has similarly ruled in GCR plan cases that a utility cannot recover intraperiod underrecoveries. (MPSC's October 29, 2003 Order in Case No. U-13550). Although case law has upheld the MPSC's authority to roll a prior year's over or underrecovery into PSCR factors for the next plan year, there is no support for inclusion of an intraperiod underrecovery in the current year PSCR factor. Accordingly, the MPSC should reject Consumers Energy's attempt to include an intraperiod

underrecovery in the 2006 PSCR Plan Factor as violative of prior MPSC orders and violative of Act 304.

Consumers attempts to distinguish the instant case from prior precedent, however, it is impossible to distinguish the principle set forth in U-7785:

The Commission agrees with the Staff that this controversy centers on one issue -- whether, in a PSCR case under Act 304, a utility may, during a plan year for which the factors are proposed, increase its filed factors in order to generate revenues in the remaining portion of the plan year sufficient to offset an estimated amount of underrecovery of allowable power supply costs actually experienced in the elapsed portion of the year.

In U-14701 (a PSCR Plan case), Consumers is seeking an increase in its temporary factor in order to generate revenues in the remaining portion of the plan year sufficient to offset an estimated amount of underrecovery of allowable power supply costs actually experienced in the elapsed portion of the year. If Consumers is claiming that it has not "actually experienced" any underrecovery during the first part of the PSCR plan year, then it is even more clear that the Commission should not grant an increase in the temporary factor for some sort of speculative underrecovery.

Not only does Act 304 and prior Commission precedent support denying the Consumers' request for recovery of intra-period underrecovery during the plan year, but it is in the best interest of residential ratepayers to deny Consumers' request. As argued by the Attorney General in his December briefs regarding the temporary factor hearings:

Staff witness Nicholas Nwabueze recommended substituting quarterly PSCR factors rather than the annualized PSCR factors proposed by Consumers. Exhibit S-1 identifies a first quarter PSCR factor ceiling of 6.61 mills/kWh, a second quarter PSCR factor ceiling of 11.99 mills/kWh, a third quarter PSCR factor ceiling of 11.35 mills/kWh, and a fourth quarter PSCR factor ceiling of 10.45 mills/kWh. These quarterly factors would substitute for annual levelized PSCR factors traditionally used by Consumers.

Staff's proposed quarterly PSCR factor ceilings would result in significantly higher average costs per kWh for retail customers during the second and third quarters of 2006, and lower than the average costs per kWh during the first and fourth quarters of 2006. Dr. Nwabueze states that all customers would be charged the same PSCR factors each quarter. This statement is technically correct, but his proposal has unintended consequences that result in shifting the burden of power supply cost recovery from high load-factor industrial and commercial customers to low load-factor residential customers.

Customers whose purchasing pattern does not match that reflected in Exhibit S-1 would pay an annual amount in quarterly PSCR charges that would be higher or lower than they would pay under an annualized PSCR. Residential customers tend to purchase a higher percentage of their total annual electricity during the months of June through September by reason of their high air conditioning load. The effect of Staff's quarterly PSCRs would be to increase their total cost recovery burden. Conversely, industrial customers with even loads throughout the year would pay considerably less under Staff's quarterly PSCRs.

Taking a simple example and using Staff's numbers prior to its proposed 1.0 mill deferral, the average annual cost for a customer buying one kWh per month would be 10.11 mills. The average annual cost for a customer taking zero kWh per month in January through March and in October through December and 2 kWh per month in April through September would be 11.67 mills per kWh. In both scenarios, the customer would be buying 12 kWh for the entire year. The difference is 1.57 mills per kWh. Staff's proposal might reduce rate shock for residential customers in January-March and October-December, but would increase rate shock from April through September.

Dr. Nwabueze agrees that his quarterly method results in different revenue collection than applying the annual leveled approach adopted by the MPSC in its February 4, 1986 Opinion and Order in Case No. U-7775 (3T 76). In other words, Dr. Nwabueze has proposed a new method for designing temporary PSCR factors even though the quarterly method differs from the annual leveled method approved by the MPSC consistently since 1986. Such a change conflicts with the principles supported by Dr. Nwabueze that Consumers' temporary PSCR factors should be limited by past determination and should not include any new procedures (3 T 69). In addition, the quarterly method substitutes a new, April-September pattern of rate shock for residential customers for the annual rate shock proposed by Consumers.

The Attorney General contends that the MPSC should adopt annual factors instead of quarterly factors. Quarterly factors will create more rate shock at the time of year when residential consumption is expected to be highest, so quarterly factors will increase bills at a time when total residential bills will be higher. This represents a counter-productive approach to implementing a rate shock policy. Dr. Nwabueze has proposed a new method for designing temporary PSCR factors

that departs from the annual levelized method approved by the MPSC consistently since 1986. The Attorney General contends that the MPSC should adopt annual factors instead of quarterly factors. Quarterly factors might reduce rate shock in the first quarter of 2006, but they create more rate shock in the second and third quarters when residential consumption is expected to be highest. This represents a counter-productive approach to implementing a rate shock policy.

As discussed in Mr. King's prefiled testimony, the Commission has found rate shock to be a relevant consideration in cases such as the instant case. (3T 56). In fact, the Commission stated that it "attaches much importance to the public interest in avoiding rate shock." MPSC Order, December 20, 2001, U-13060, pp7-8. Accordingly, the Commission should consider the Attorney General's arguments regarding rate shock in determining an appropriate PSCR factor in this case.

(Attorney General's December 12, 2005 Initial Brief in U-14701, pp 9-12).

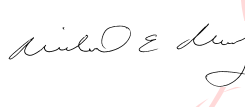
The adopted quarterly factor already has the effect of increasing electric rates during the summer which is when residential customers will bear the brunt of these increases. Allowing Consumers to increase the factor even higher for this summer to offset an estimated intra-period underrecovery (January through June 2006) will only further increase the rate for residential customers during a time when these customers will be using the most electricity.

III. CONCLUSION

For the reasons stated above, the Attorney General respectfully requests that the Commission adopt the ALJ's recommendation to deny Consumers the recovery of any intra-period underrecovery.

Respectfully submitted,

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Attorney General

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